IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2007
CORAM:

THE HONOURABLE MR. JUSTICE V.DHANAPALAN

W.P. No.19028 of 2007 & M.P. No.2 of 2007

1 Nizamuddin
2 Dr. S. Fathima Beevi
both represented by her
Power of Attorney Agent
Shajahan ... Petitioners

vs.

1 The Superintending Engineer
Highways Administration
M.O.S.R.T. & H. Department of Road Transport
and Highways
Chennai - 600 090

2 The Assistant Divisional Engineer
National Highways
Tiruchirapalli - 20

3 The Project Director (I/C)
The National Highways Authority of India
Tiruchirapalli - 1

4 The District Collector
Tiruchirapalli District
Tiruchirapalli ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus as stated therein.

For Petitioners: Mr. K.M. Vijayan, Senior Counsel
for M/s. La Law

For RR 1 to 3 : Mr. V.T. Gopalan,
Addl. Solicitor General of India
assisted by Mr.P.Wilson,
Asst.Solicitor General of India

For R4 : Mr. A. Edwin Prabakar,
Addl. Govt. Pleader

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O R D E R

This writ petition has been filed seeking a writ of mandamus forbearing the first respondent from invoking the provisions of the Control of the National Highways (Land and Traffic) Act, 2002 (in short "the Act") interfering with the petitioners' private property in any manner including demolition of their property to the extent of 4,650 sq. ft. in S. No.19/1A1A1 at Village No.42, Kottapattu Village, Tiruchirappalli Taluk and District without following the appropriate procedures contemplated under law and without a rule being enacted under Section 23 and 26 of the Act 13 of 2003.

2. At the outset, it is to be stated that this writ petition is a sequel to W.P. No.1630 of 2007 ordered on 24.03.2007 in which the petitioners' complaint is that even after the said orders of this Court, neither Rules were framed under Section 23 and 26 nor the petitioners were shown documents establishing the fact that the land alleged to be encroached by way of demolition is not being established as a Highways land. It is stated by the petitioners herein that in the counter- affidavit in the said writ petition, the respondent had specifically stated that the land in question is neither occupied nor required for National Highways and is required only for the purpose of laying pipeline of TWAD Board, which has no legal right enforceable through the Highways Authority.

3. Coming to the case of the petitioners, they jointly purchased an extent of 4,650 sq. ft. of land in S. No.19/1A1A1 at Village No.42, Kottapattu Village, Tiruchirappalli Taluk, Tiruchirappalli District vide document No.2294/2003 dated 18.10.2003 and document No.1208/2004 dated 04.06.2004 from one Rajendran and Mohammed Siddique respectively and the said extent of land is a patta land and was in the enjoyment of the petitioners' predecessors in title for several decades.

4. It is their case that the entire Act is taken under Act 13 of 2003 under which Section 23 provides certain deeming provision relating to the ownership and vesting of land in respect of a Highway Authority and under Section 23(3), the petitioners are enabled to object the claim of the Highway Authority which is required to pass appropriate orders either accepting or rejecting the claim and under Section 23(2) of the Act, the Highways Authorities are expected to maintain records in the prescribed manner showing the vesting of particular lands relating to Highway and the question of taking away their property and its title which has become final under the Patta Pass Book, does not at all arise to the Highways Authority.

5. Their further case is that under Section 26(3) of the Act, notice of removal of unauthorised encroachment shall be given in the prescribed format and since no rule has been made for this purpose, Section 26 can not at all be invoked. According to the petitioners,

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they have the revenue records relating to patta under Patta Pas Book Act issued in their favour, they have also got building planning permission and the property was purchased by them during 2004 with title from 1963 and as such, the respondents' action to take away their property is against such records.

6. Earlier, the first respondent, vide his order dated 21.12.2006 issued under Section 26(2) of the Act, had required the petitioners to remove the encroached area of 228 sqm. at No.1, Kings Hospital, By-pass Road, TVS Tollgate, Tiruchirapalli and had also given them an opportunity to make their representation, if any, followed by personal hearing. Accordingly, the petitioners made a representation dated 23.12.2006 raising their objections and also appeared for hearing on 27.12.2006. Pursuant thereto, the first respondent, vide his order dated 27.12.2006, directed the Revenue Authorities for measuring the petitioners' property and for marking the boundary of National Highways in the presence of National Highways authorities and the petitioners and further observed that action may be initiated in the event of any encroachment. Challenging this notice dated 27.12.2006, as already stated, the petitioners filed a writ petition in W.P. No.1630 of 2007 and this Court, on 24.03.2007, disposed of the said writ petition with the following direction:

> "The fourth respondent shall issue notice to the petitioners and respondents 1 to 3 fixing the time and date for inspection, survey and marking of the National Highway in the property in question and thereafter direct the concerned Revenue Authorities to undertake such an exercise. If any encroachment is found, it is open to respondents 1 to 3 to proceed against the petitioners in terms of Section 26(2) of the Act by complying with all the requirements of the provisions contained therein. The petitioners shall cooperate with the Revenue Authorities in the inspection, survey and marking of the National Highway".

7. As per the aforesaid direction of this Court, the fourth respondent issued a notice dated 26.04.2007 fixing the inspection and survey of the petitioners' property on 09.05.2007 at 11 a.m. and opposing the manner of inspection conducted on 09.05.2007, the petitioners addressed an objection letter dated 09.05.2007 to the National Highways with regard to the measurement of their lands by the authorities concerned, followed by a letter dated 24.05.2007 to give them an opportunity before proceeding further, as per this Court's order dated 24.03.2007. Since the petitioners have constructed a hospital in the land in question with proper sale deed and mutation in revenue records and the said hospital has been serving the public and since the action of the Highways authorities to demolish their

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property without any acquisition to the effect and without following the procedure affects their right guaranteed under Article 300 (A) read with 19(1)(g) of the Constitution, the petitioners have filed the present writ petition for the relief as stated above.

8. The third respondent has filed counter contending that:

a. as per Section 5 of the National Highway Act, the Central Government, may, by notification in Official Gazette, direct that any function related to the development or any National Highway shall subject to conditions if any as may be specified in that notification also be exercised by the Government of the State within which the National Highway situated or by any office or authority subordinate to the Central Government or the State Government; originally, the Central Government has entrusted the roads with the State Government and subsequently after constitution of the National Highway Authority, pursuant to the powers conferred under Section 11 of the Act, the Central Government entrusted the stretch of NH-45 to the National Highways Authority of India by its Gazette Notification dated 04.02.1999 and after legislation of control of National Highways (Land and Traffic) Act, 2002 which was notified by the Central Government, the removal of encroachments on the National Highways has been entrusted with the Administrator appointed by the Central Government and the Central Government under Notification dated 20.01.2005 has established the National Highways administration in respect of each highways including NH-45 stretch and this notification was subsequently amended by a notification dated 23.02.2006 based on which the Regional Officer/Superintending Engineer, Ministry of Shipping, Road Transport and Highways, Chennai who is the first respondent has been authorised to exercise the powers and discharge the functions on the Highways administration; the Rules called Highways Administration Rules, 2004 has been notified by the Government of India which provide for the exercise of the powers and function by the Highways administration which also provides the format for service of notices for removal of unauthorised occupation in the Highway land;

b. the Regional Officer, Chennai, viz., the Superintending Engineer (Regional Officer) Ministry of Shipping, Road Transport and Highways, Regional Office, Chennai has been authorised by the Government of India to exercise the powers of the Highways Administration and thus, it is clearly established that Highways Administration is authorised to issue notices to encroachers under sub-section (2) of 26, Control of

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National Highways (Land and Traffic) Act, 2002 pertaining to the removal of encroachment;

c. under National Highway Tribunal Rules, 2003, any party aggrieved by the orders of the Highway Administration can approach the National Highway Tribunal for redressal of such grievance by filing an application and as such, this writ petition is not at all maintainable;

d. the allegation of the petitioner that no Rules were framed as contemplated under Section 23 and 26 of Act 13 of 2003 is false as the Highways Administration Rules, 2004 has been framed and the same has come into force from the date on which the Act has come into force;

e. consequent to the observation of this Court and based upon the request from the Divisional Engineer, National Highways, Tiruchirapalli to remove the encroachment, the first respondent sent notices under Section 26(2) to about 15 persons including the petitioner who are all encroachers on the National Highways and these parties were also given opportunity to plead their case before the first respondent on 27.12.2006;

f. on 27.12.2006, the petitioners, represented by their Power Agent and also other recipients appeared before the first respondent and submitted various documents and at the time of hearing, it was requested by all the parties unanimously for measuring the properties for demarcation of National Highways boundary by the Revenue Authorities in the presence of the National Highways Authority and revenue officials and accordingly, the first respondent, by his common order dated 27.12.2006 ordered to demarcate the right of way of National Highway and take appropriate action, if encroachment is found and established.

g. Pursuant to the directions of the first respondent, measurements have been taken by the Survey officials in the presence of the Revenue officials and NHAI and it was found that there is an encroachment on the National Highway by the petitioner to the tune of 228 sq. mtr. and even before completion of this process, the petitioner has approached this Court by filing 1630 of 2007 challenging the order dated 27.12.2006 passed by the first respondent and pursuant to this Court's direction to conduct the survey, again a notice dated 09.05.2007 was given by the District Collector to the petitioner; the revenue officials surveyed the road in the presence of the Project Director of National Highways Authority of India and the petitioners' Power Agent and the Minutes were recorded on 09.05.2007 about surveying and demarcation and

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the petitioners as well as the officials have signed the Minutes;

h. by virtue of the survey conducted by the Revenue officials and by virtue of establishing the fact that there is encroachment of 228 sq. mtrs., the first respondent again, by his notice dated 11.06.2007 issued under Section 26(2) of the Act, fixed the hearing on 15.06.2007 as to hearing of removal of encroachments pursuant to which the petitioners appeared for enquiry before the first respondent on 15.06.2007 and submitted their objections and due to the fact that the petitioners have filed this writ petition, no further orders have been made by the first respondent and thus even before the first respondent could make an order as contemplated under Section 26 of the Act, the petitioner has filed the present writ petition with the mere object to forestall the enquiry conducted by the first respondent;

i. the petitioner's allegation that the land is acquired for the purpose of TWAD Board and that it is not required for National Highways is false as the land that has already been acquired for the National Highways has now been encroached by some of the encroachers including the petitioners and the same is now sought to be removed; after removal of the encroachment, a portion of the land is required for laying the pipelines by the TWAD Board and the pipelines are laid in such a way that they do not affect the formation of National Highway over the places where encroachments are removed;

j. as admitted by the petitioners, they are the owners of lands in S.No.19/1A1A1 and the survey conducted by the Revenue officials on 09.05.2007 reveals that an extent of 3.04 acres was acquired for extension of NH-45 comprising SF Nos.19/1B and 19/2B having an extent of 0.88 acres and 2.16 acres respectively and both these extents have been clubbed and a total extent of 3.04 acres has been acquired and a revised survey number of 19/1B has been assigned as per the award of the Land Acquisition Officer bearing Award No.1/59 dated 22.01.1959 and change to this effect was also done in the revenue record.

k. mere granting of patta by itself would not confer any title as held by this Court as well as the Supreme Court as patta is not a document reflecting title but it only reflects the Revenue entries and as such, any order made under Patta Passbok would not in any way affect the title entitlement of National Highways as it is a National Highway road.

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l. After the passing of orders by the first respondent, action will be taken to evict the encroachment in the location; the Highways administration/Regional Office, Chennai, while reserving its final orders has perused the revenue records submitted before it and thus, it was established that part of the constructed structure of the King's Hospital was found encroaching the land in S.F. No.19/1B and the Revenue authorities have also indicated in their report that S.F. No.19/1A and 1B, 2A and 2B have been sub-divided from 19/1 and 2 and during 1959 as per Reference dated 14.03.1959 by virtue of award no.1/59 dated 22.01.1959 for the construction of by-pass road in this location;

m. the petitioners' patta appears to have been issued during 1963 for S.F. No.19/1A1A1 whereas as per the Revenue records, it is established beyond all reasonable doubts that the portion of structure measuring 228 sq. mtrs. is lying only in S.F. No.19/1B based on survey records prepared during 1959 and the Tahsildar, Tiruchirapalli has also inter alia avouched that the part of petitioners' structure is lying in S.F. No.19/1B only and as such, the petitioners have not substantiated their claim by producing any clinching documentary evidence that the entire structure is lying in S.F. No.191A1A1 before Highway administration;

n. all the formalities adumbrated in the Control of National Highways (Land and Traffic) Act 2002 have been observed by the Highways Administration / Regional Office, Chennai and the land in question is absolutely owned by NHAI and the proceedings have been kept in abeyance by the first respondent after completing enquiry owing to the stay order passed by this Court; thus, it is confirmed by the Revenue officials that part of Kings Hospital to an extent of 228 sq. mtrs. constructed in S.F. No.19/1B belongs to NHAI and above all, at the instance of the petitioner, the Tahsildar, as per his letter dated 14.06.2007, has stated that the part of Kings Hospital structure is within S.F. No.19/1B and it is established that an extent of 228 sq. mtrs. has been encroached by the petitioners in S.F. No.19/1B which belongs to NHAI; and

o. the petitioners are not entitled to seek the relief since the land in S.F. No.19/1B measuring an extent of 228 sq. mtrs involved in this case has been well established by the Revenue authorities as Highways land by earlier acquisition and it is also admitted by the adjacent land owners who have removed their encroachments by themselves and the encroachment of the petitioners alone stands in the stretch of NH-45 which hinders the formation

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of road and in view of these reason, the writ petition is liable to be dismissed.

9. Heard Mr. K.M. Vijayan, learned Senior Counsel appearing for the petitioner, Mr. V.T. Gopalan, learned Additional Solicitor General of India appearing for respondents 1 to 3 and Mr. A. Edwin Prabakar, learned Additional Government Pleader for the fourth respondent.

10. The learned Senior Counsel appearing for the petitioner has contended that as per Section 23(2), the Highways authorities are expected to maintain records in the prescribed manner showing the vesting of rights of lands with the Highways and in the absence of any such records, the respondents are estopped from taking away the petitioners' property and its title which is final under the Patta Pass Book Act coupled with building planning permission. Pointing out Section 26(3) of the Act, the learned Senior Counsel has contended that no notice of removal of encroachment has been given to the petitioner in the prescribed format and that too in respect of a land which does not belong to Highways. It is also contended by him that the acquisition proceedings do not clearly specify the metes and bounds of the petitioners' lands alleged to have come within the Highways land. Finally, the learned Senior Counsel has contended that the land which houses the petitioners' hospital has been purchased by the petitioners with proper sale deed and mutation in revenue records which will have a final say in the matter.

11. The learned Additional Solicitor General of India, per contra, has contended that as per this Court's order dated 24.03.2007, when the respondents had carried out demarcation of boundary of National Highways in the presence of Highways authorities on which occasion, the petitioners' Power Agent was also present and had also given an opportunity of hearing to various encroachers on 15.06.2007 in which the petitioners' Power Agent attended and had also signed in the Register for having attended the enquiry, the petitioners are estopped from contending that the respondents have acted in violation of Section 26(3) of the Act. Also, by bringing to the notice of this Court the letter dated 25.05.2007 addressed by the petitioners' Power Agent to the third respondent seeking grant of ten days' time to vacate the building, the learned Additional Solicitor General has contended that the petitioners have obtained an order of interim injunction suppressing all these material facts aiming to stall the removal of encroachment.

12. Assailing the case of the petitioners that the land sought to be acquired by the respondents is their patta land, the learned Additional Solicitor General has explained as to how the respondents are correct in initiating the proceedings to remove the encroachment made by the petitioners. According to him, before acquisition, lands were in S.No.19/1 and 19/2; while S.No.19/1 was sub-divided as 19/1A and 19/1B, S.No.19/2 was sub-divided as 19/2A and 19/2B; while 19/1A had undergone various sub-divisions, 19/2A remained unacquired and

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19/1B and 19/2B measuring 0.88 acres and 2.16 acres totalling 3.04 acres were acquired and given S.No.19/1B and these have also been certified by the Revenue Authorities in the Revenue records vide page 6 of the typedset of the respondents and as such, the land sought to be achieved is in S.No.19/1B which does not belong to the petitioners and this fact also has been suppressed by the petitioners.

13. The learned Additional Solicitor General has further argued that it is a settled proposition that the concept of eminent domain is an essential attribute of every State and when there is a claim of individual's rights over the public interest, it is only the public interest which will prevail upon the individual's interest and as such, the respondents have every right to proceed against the petitioner.

14. Finally, attacking the contention of the learned Senior Counsel for the petitioner that no rule has been framed by the respondents under Section 23 or Section 26 of Act, the learned Additional Solicitor General has contended that the said rules are found in page 15 of the typedset of papers filed by the respondents.

15. Heard the learned counsel for the parties at length and perused the material documents placed before this Court.

16. A careful analysis of the facts would reveal that the land in question was acquired by the respondents in 1959 by Award No.1/59 dated 22.01.1959. Before that, all the lands were in S. No.19/1 and 19/2. The S.No.19/1 was sub-divided as 19/1A and 19/1B. While 19/1A related to unacquired part of the land, the land in S.No.19/1B related to the acquired portion. Similarly, while S.No.19/2A related to the unacquired portion, S.No.19/2B related to the acquired portion. In course of time, S.No.19/1A had undergone several sub-divisions which include S.No.19/1A1. While an extent of 0.88 cents of land was acquired in S.No.19/1B, 2.16 acres were acquired in S.No.19/2B thus, leading to a total acquisition of 3.04 acres. Thus, two portions of land had been clubbed together and given a new S.No.19/1B and the same has been certified by the revenue authorities. An extract of the revenue records has been filed in the typedset of papers filed by the respondents. Therefore, it is clear that the land in question, which is acquired for a public cause, is comprised in S.No.19/1B and the extent of land shown is 3.04 acres which do not form part of 19/1A1.

17. While that being the position, the petitioners have jointly purchased an extent of 4,650 sq.ft. of land in S.No.19/1A1A1 at Village No.42, Kottapattu Village, Tiruchirapalli Taluk and District vide document no.2294 of 2003 dated 18.10.2003 and document no.1208 of 2004 dated 04.06.2004 from one Rajendran and Mohd. Siddik repectively and the said extent of land is shown as a patta land and was in the enjoyment of the petitioners' predecessors in title. The main stand

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of the petitioners is that since they are having valid patta and revenue records relating to patta under Patta Passbook Act issued in their favour, they are the owners of the land and they have got their over their property.

18. In such a situation, the respondents have acquired the land in question for a public purpose and in order to proceed with the project, a notice under Section 26(3) of the Act has been issued for removal of encroachment to the extent of 228 sq.m. at Village No.42, Kings Hospital, By-Pass Road, TVS Tollgate, Tiruchirapalli. Also, liberty was given to the petitioners to make a representation, if any, followed by personal hearing. Pursuant thereto, the petitioners made a representation on 23.12.2006 raising their objections and also appeared for hearing on 27.12.2006 and thereafter, the first respondent on 27.12.2006, directed the revenue authorities for measuring the petitioners' property and for marking the boundary of the National Highway in the presence of the National Higways authorities and the petitioners and further observed that action may be initiated in the event of any encroachment.

19. As already stated, the above notice dated 27.12.2006 was challenged by the petitioners in W.P. No.1630 of 2007 and this Court, by an order dated 24.03.2007, disposed of the said writ petition with the following direction:

> "The fourth respondent shall issue notice to the petitioners and respondents 1 to 3 fixing the time and date for inspection, survey and marking of the National Highway in the property in question and thereafter direct the concerned Revenue Authorities to undertake such an exercise. If any encroachment is found, it is open to the respondents 1 to 3 to proceed against the petitioners in terms of Section 26(2) of the Act by complying with all the requirements of the provisions contained therein. The petitioners shall cooperate with the Revenue Authorities in the inspection, survey and marking of the National Highway."

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20. In furtherance to the above direction of this Court, the fourth respondent issued a notice to the petitioners on 26.04.2007 fixing the inspection and survey of the petitioners' property on 09.05.2007 at 11 a.m. The petitioners, opposing the manner of inspection conducted on 09.05.2007, addressed an objection letter on the same day to the National Highways with regard to the measurement of their lands by the authorities concerned and further addressed a letter to the respondents on 24.05.2007 requesting them to give them an opportunity before proceeding further claiming that they have

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constructed a hospital in the land in question with proper sale deed and mutation in the revenue records and the said hospital has been serving the public at large.

21. According to Section 5 of the National Highway Act, the Central Government, may, by notification in Official Gazette, direct that any function related to the development or any National Highway, shall subject to conditions if any as may be specified in that notification also be exercised by the Government of the State within which the National Highway situated or by any office or authority subordinate to the Central Government or the State Government. Originally, the Central Government has entrusted the roads with the State Government and subsequently, after constitution of the National Highway Authority, pursuant to the powers conferred under Section 11 of the Act, the Central Government entrusted the stretch of NH-45 to the National Highways Authority of India by its Gazette Notification dated 04.02.1999 and after legislation of the control of National Highways (Land and Traffic) Act, 2002 which was notified by the Central Government, the removal of encroachments on the National Highways has been entrusted with the Administrator appointed by the Central Government and the Central Government, under Notification dated 20.01.2005, has established the National Highways administration in respect of each highways including NH-45 stretch and this Notification was subsequently amended by a Notification dated 23.02.2006 based on which the Regional Officer/Superintending Engineer, Ministry of Shipping, Road Transport and Highways, Chennai who is the first respondent has been authorized to exercise the powers and discharge the functions on the Highways administration. The rules called Highways Administration Rules, 204 have been notified by the Government of India which provide for the exercise of the powers and function by the Highways administration which also provides the format for service of notices for removal of unauthorized occupation in the Highways land and the respondents have control and power to remove the encroachment on the National Highway as an authority authorized and competent to initiate action against the encroachers.

22. It is seen that pursuant to the order of this Court as indicated above, the NH-45 boundary in between km 322/0 and 323/0 had been demarcated in the presence of the officers of the respondents on 09.05.2007. In that process of hearing, the power agent of the petitioners had participated and had also signed in the Register for appearing in the enquiry and the particulars of demarcation have been provided in the typedset of papers filed by the respondents. Further, the power agent of the petitioners had given a letter dated 25.05.2007 to the Project Director, National Highways Authority of India requesting to give ten days time upto 05.06.2007 to keep the plot vacant. That letter also has been annexed in the typedset of papers.

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Therefore, having attending the hearing and sought time to keep the plot vacant and when the order of this Court also has been given effect to by the respondents, the petitioners, further questioning the action of the respondents, have filed this petition.

23. A consistent plea has been made by the respondents that the petitioners have all along suppressed the particulars of award proceedings under which the land in question was acquired by the National Highways and the fixation of boundaries under the Survey and Boundaries Act, 1923 and have now come before this Court with a prayer that their possession and enjoyment of the land should not be disturbed without following the procedure contemplated under law and without any rule being framed under Rule 23 or 26 of the Act 13 of 2002.

24. Though it is the case of the petitioners that the respondents have not framed the rules under Section 23 or 26 of the Act 13 of 2003, the said rules do form part of the typedset of papers filed by the respondents and that being the case, I find no force in the argument advanced by the learned Senior Counsel appearing for the petitioners that the non-framing of rules have vitiated the proceedings of the respondents and without framing such rules, the petitioners shall not be disturbed.

25. Coming to the next contention raised by the learned Senior Counsel for the petitioners that the land was originally acquired for the purpose of TWAD Board and as such, it is not required for National Highways, I am of the considered opinion that this is an aspect coming under the purview of the Central and State Governments in implementation of a project meant for the public at large. The respondents, bearing in mind the benefit of the public at large, has initiated the project and has proceeded in accordance with the provisions of the Act and rules contemplated, particularly Section 5 of the Act as extracted in one of the foregoing paragraphs. Also, it is not the case of the petitioners that the land in question is not used for public purpose when admittedly it is required by the respondents only for a public purpose. Therefore, here again, I do not find any force in the argument advanced by the learned Senior Counsel appearing for the petitioner. In this connection, it is to be borne in mind that it is a settled proposition that the powers under the Act represent the powers of eminent domain vested in the State which may need to be exercised even to the detriment of individuals'

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property so long as it achieves a larger public interest and this proposition is settled by the Supreme Court in a catena of decisions which has held that the concept of eminent domain is an essential attribute of every State and that this concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual. In the instant case, the NHAI, for the purpose of implementation of its project, is in need of the land in dispute. Thus, when the larger public interest is of paramount importance, the petitioner, being an individual cannot claim right over the property in dispute, particularly when his land had already been acquired by the authority concerned long back.

26. Lastly, it is the contention of the learned Senior Counsel for the petitioners that the petitioners have the revenue records relating to patta under Patta Pas Book Act issued in their favour and they have also got building planning permission and the property was purchased by them during 2004 with title from 1963 and as such, the respondents' action to take away their property is against such records. This contention of the learned Senior Counsel has to fall to ground for the reason that it is a settled proposition, made by this Court as well as the Supreme Court, that mere grant of patta by itself would not confer any title as it is not a document reflecting title but reflecting mere revenue entries and any order made under the Patta Passbook Act would no way affect the title entitlement of National Highways Authority of India when the land in question has been acquired for a public purpose and the award had already been passed in respect of that land as early as in 1959 and especially so when the total extent of 3.04 acres had been acquired and a revised S.No.19/1B had been assigned as per the award of the Land Acquisition Officer by award no.1/59 dated 22.01.1959 and a change to this effect had also been done in the revenue records. Therefore, it can sefely be held that in the absence of any conferment of title on the petitioners, the claim made by them after the acquisition proceedings shall not dis-entitle the National Highways authority to proceed with their project.

27. It is also seen that the patta appears to have been issued during 1963 for S.F. No.19/1A1A1 whereas as per the revenue records, it is established that the portion of structure measuring 228 sq.m. is lying only in S.F. No.19/1B based on survey records prepared during 1959 and the Tahsildar, Tiruchirapalli has also inter-alia avouched that the portion of the petitioners' structure is lying in S.F. No.19/1B only. That apart, from a perusal of the typedset of papers which include documents such as "A" Register of Kottapattu village, Field Measurement Book and FMB sketch showing the land in question before and after sub-division, it is clear that the respondents have maintained the records which they are obligated to maintain under Section 26(2) of the Act. Thus, when the fact remains so, the

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contention made by the learned Senior Counsel for the petitioners that the respondents have not maintained the records required to be maintained under Section 26(2) of the Act does not have legs to stand.

28. Thus, taking all the aforesaid factors into consideration and also the submissions made by the learned counsel on either side, I am of the considered view that the the petitioners have not made out a prima facie case for grant of relief sought by them and the writ petition is liable to be dismissed as devoid of merits.

29. However, taking note of the various factors under which the petitioners claim to have purchased the land in question and also the fact that they have constructed a hospital in the said land and have been concentrating in medical care in that area by incurring a considerable sum towards its construction and are also recurring day-to-day expenditure, with a view to give an equitable solution, I am of the considered view that the respondents who are the authorities under the Government of India are competent to work out whether any compensation can be paid to the petitioners, though they are not obligated under any statute but only on the ground of equity and particularly, keeping in mind the service rendered by the petitioners in the field of medicine. Accordingly, I direct the petitioners to address a representation to the respondents within a period of two weeks from the date of receipt of a copy of this order, seeking compensation by explaining their pitiable plight and on receipt of such representation from the petitioners, the respondents are directed to consider and pass appropriate orders therein within a period of four weeks.

In the result, the writ petition stands dismissed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

cad

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1 The Superintending Engineer
Highways Administration
M.O.S.R.T. & H. Department of Road Transport
and Highways
Chennai - 600 090

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2 The Assistant Divisional Engineer
National Highways
Tiruchirapalli - 20

3 The Project Director (I/C)
The National Highways Authority of India
Tiruchirapalli - 1

4 The District Collector
Tiruchirapalli District
Tiruchirapalli

+ One cc to Mr. P. Wilson Assistant Solicitor General of India,SR 72471
+ One cc to M/s. Law & Law SR 74226

BS (co)
sg 13/12/07

order in
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